IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:14.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

W.P.Nos.25227, 30741 and 31380 of 2006
and M.P.Nos.1 to 3 in W.P.No.25227
M.P.Nos.1 & 2 in W.P.Nos.30741 and 31380 of 2006

K.Indirani ... Petitioner in W.P.No.25227 of 2006
R.Sivasubramaniyam ... Petitioner in W.P.No.30741 of 2006
R.Jayachitra ... Petitioner in W.P.No.31380 of 2006

Vs.

1. The State of Tamil Nadu Rep.
By Secretary to Government,
Education Department,
St.George Fort, Chenani 600 009

2. The Director of School Education,
DPI Compound, College Road,
Nungambakkam, Chennai 600 006.

3. Teachers Recruitment Board,
Rep.by its Chairman,
4th Floor, E.V.K.Sampath Maligai,
DPI Compound, College Road,
Chennai 600 006.

... Respondents in all the W.Ps.

PRAYER IN W.P.No.25227 of 2006 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus calling for records comprised in Notification in Advt.No.1/2006-07 issued by the Third respondent dated 26.07.2006 and to quash the Clause 8 and 10 of the said notification requiring to undergo written examination for making appointment to the post of Teacher at School level and consequently direct the respondents to dispense with the method of holding written examination for filling up the post of Teacher at School level in future.

PRAYER IN W.P.No.30741 of 2006 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus calling for records comprised in Notification in Advt.No.1/2006-07 issued by the Third respondent dated 26.07.2006 and to quash the Clause 8 and 10 of the said notification requiring to appear

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the petitioner for written examination for the post of the school teachers and consequently direct the respondent to dispense with the method of holding the written examination for filling up the school teachers post.

PRAYER IN W.P.No.31380 of 2006 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus calling for records comprised in Notification in Advt.No.1/2006-07 issued by the Third respondent dated 26.07.2006 and to quash the Clause 8 and 10 of the said notification requiring to undergo written examination for making appointment to the post of Teacher at School level and consequently direct the respondents to dispense with the method of holding written examination for filling up the post of Teacher at School level in future.

For Petitioners :Mr.V.Ayyathurai in
W.P.No.25227 of 2006 and
W.P.No.31380 of 2006
Mr.V.S.Kesavan
W.P.No.30741 of 2006

For Respondents :Mr.M.Sekar
Special Government Pleader Education
Assisted by Mr.P. Gopiraja, Govt. Advocate

O R D E R

All these writ petitions are filed challenging the notification dated 26.07.2006 issued by the third respondent namely the Teacher Recruitment Board, Channai, in respect of Clause 8 and 10 of the said impugned notification requiring the candidates to undergo written examination for making appointment to the post of teachers at school level and also for a consequential direction against the respondents to dispense with the method of holding written examination for filling up of vacancies for the post of teachers at school level in future.

2. The petitioners have acquired Post Graduate degree in various subjects like Botany, Zoology, etc., and they have registered with the Employment Exchange. In respect of the petitioner in W.P.No.25227 of 2006, the registration was on 30.07.1985, the petitioner in W.P.No.30741 of 2006, the registration was on 03.05.1991 and the petitioner in W.P.No.31380 of 2006, the registration was on 15.06.1983 and which has been periodically renewed till date. Apart from the said Post Graduate degree, the petitioners have obtained B.Ed., degree and also M.Ed., in respect of the petitioner in W.P.No.25227 of 2006 and W.P.No.31380 of 2006 and they are all qualified for appointment as Post Graduate Assistants at school level and they have worked in some of the private educational institutions on a consolidated pay.

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3. According to the petitioners, whenever vacancies for the post of teachers in schools as well as the Lecturers in colleges arose the usual method was that the said vacancies were filled up among the candidates who have registered their names in the Professional and Executive Employment Exchange Office, based on which call letters will be issued on the seniority basis in employment registration and it was the legitimate expectation that the petitioners would get appointment on seniority basis through the Employment Exchange Office. The petitioners have also informed about their higher qualifications of M.Phil, M.Ed., etc. to the Employment Exchange. The normal method is that the Employment Exchange used to send candidates on the basis of seniority in the registration in the Employment Exchange at the rate of 1:3 ratio to the appointing authorities. It was from 2001, the Government has introduced a method of appointment of teachers through Teachers Recruitment Board by making necessary notifications. The appointment by the Teachers Recruitment Board was by way of written examination followed by interview. Even though the petitioners have earlier applied consequent to the Teachers Recruitment notification, they could not compete with the fresh candidates since the written examination procedure favours only fresh candidates and therefore the candidates like the petitioners were deprived of their right of appointment in Government, Government aided schools and also Government Colleges. It is also stated that in respect of the appointment of Lecturers in the college level, the written examination has been dispensed with. While the recruitment of teachers are made in respect of colleges and schools only by the third respondent, regarding the Lecturers in colleges the method choosen is by interview while for appointment of teachers in school level the written examination has been prescribed.

4. The Government announced 659 vacancies in the school teachers to be filled up apart from 1600 post of Lecturers in colleges. It was pursuant to the said announcement the third respondent on behalf of the Government of Tamil Nadu has issued the impugned notification dated 26.07.2006 on all newspapers calling for applications for the direct recruitment of Post Graduate Assistant / Physical Education Directors Grade I for Government Higher Secondary Schools in 2006-2007. As per the said notification, the commencement of date of sale of application forms by the Chief Educational Officers was from 27.07.2006 and the last date for the said sale was stated as 11.08.2006. It is also stated that the last date for submitting the filled in application is 11.08.2006 and the date of written examination is fixed as 17.09.2006 to be held in all the 30 district Head Quarters. The impugned notification as well as the prospectus issued pursuant to the notification contemplates selection based on the marks obtained by the candidates in the written examination which consists of a single paper for a duration of 3 hours for 150 marks and also by applying the communal roster system and by certificate verification method. The petitioners challenge the said method of selection on various grounds including that the method of written examination for appointment of teachers in the school level is against

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the legitimate expectation of the candidates like that of the petitioners who have completed their Post Graduate course nearly 10 to 20 years before and making themselves eligible and waiting for appointment by way of interview which has been the method followed hitherto.

5. According to the petitioners, resorting to the method of conducting written examination for appointment to school teachers, it only tends to favour the fresh candidates who have come out of colleges afresh who will be naturally well versed in the subjects as freshers and detrimentally affect the old candidates like that of the petitioners who have studied the subjects nearly 20 years ago. That apart, it is the case of the petitioners that while in respect of the appointment of college Lecturers by the same third respondent Teachers Recruitment Board a different method of interview is followed for selection, only in respect of the teachers for appointment in the High School the written examination method is resorted to which is arbitrary, unreasonable and opposed to the public policy according to the petitioners. The impugned notification does not consider the relevant factors like the seniority of the candidates in the registration in the Employment Exchange which has been followed hitherto and the respondents have not even fixed any ratio between the candidates registered in the Employment Exchange and others. The loss of memory regarding the academic knowledge in the passage of time is only a natural phenomena and that should not prevent the petitioners from getting employment as teachers especially when there is no age limit for the appointment which is presumably upto 57 years of age.

6. It is also the case of the petitioners that, even though the impugned notification contemplates weightage marks for the candidates registered in the Employment Exchange and also the previous experience of the persons who have been teachers like that of the petitioners in any recognized schools, the said concession of adding weightage marks to such candidates has virtually no meaning, for the reason that the impugned notification states that the weightage marks will be added after certificate verification for the purpose of short listing candidates which means that the selection process is over, apart from the fact that really deserving candidates like that of the petitioners can never reach the zone of consideration for the purpose of appointment as school teachers.

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7. According to the petitioners, since as per the impugned notification, the weightage marks is sought to be added after certificate verification, it means in effect that the persons like that of the petitioners who have completed their qualified examination much earlier and at the same time are qualified for appointment as teachers, are sent out at the threshold. The benefit of the weightage mark is conferred only to those candidates who found place in the short listed list and denying to all other candidates including that of the

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petitioners. Therefore, among the candidates who have passed the qualifying examination earlier and registered themselves under the Employment Exchange who are forming a class by themselves, in respect of giving the concession of weightage marks there is discrimination between such candidates who are short listed and those who have not been able to come within the short list namely zone of consideration. Therefore, according to the petitioners, this is violative of Article 14, 16 and 21 of the Constitution of India.

8. The respondents have filed the counter affidavit. According to the respondents, the Teacher Recruitment Board was constitutioned in the year 1987 for appointment of regular teachers in the Tamil Nadu Higher Secondary Educational Services and the Tamil Nadu Subordinate Services. It was from 2001 - 2002 the method of competitive examination was introduced for recruitment of all categories of candidates and the final selection was made based on merits and communal rotation. It is also admitted by the respondents that prior to 2001 the selection procedure was by conducting interviews for assessing merits from among the candidates sponsored by Employment Exchange. It was due to the change in policy and also on account of the intervention by the decision of the Court, the practice of conducting written examination for selection of teachers was undertaken and thereafter the system of written examination followed by viva-voce and certificate verification being uniformly followed and adopted. Therefore, according to the respondents, from 2001 the Government has taken a policy decision to conduct written examination for selection of teachers in the schools and that decision was taken in accordance with the Government letter dated 10.09.2001. The said policy decision was taken for the purpose of improving the quality and content of teaching to the students of Government schools that is by conducting written examination based on the syllabus issued, the selection is made after assessing the latest upgraded knowledge of candidates in respect of the syllabi for VI to XII standards in the High Schools and Higher Secondary Schools. The competitive examinations and interviews are the recognized recruitment methods and the appointments are made based on merits and communal rotations based on the concept of social justice. It is the case of the respondents that since 2001 nearly 30000 teachers were recruited by following this process and there was no complaint. According to the respondents if the candidates like the petitioners feel that they cannot compete with the other candidates who applied pursuant to the notification, it is always open to them to seek appointments in the large number of aided and Matriculation Schools and therefore according to the respondents it is not as if the petitioners are left in lurch by the policy of the Government. Eventhough it is true that before 2001 the selection was made by way of interview and registration in the Employment Exchange by calling for 1:3 from the exchange for every post, in the advancement of technology, the written examination was introduced from 2001 like Public Service Commission and other recruitment agencies and therefore the same cannot be questioned. The respondents also state that it is based on the

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written examination in single paper for maximum 150 marks conducted on objective type of questions out of which 110 is allotted to marks to the subjects, 30 marks allotted for educational methodology and 10 marks for general knowledge. The entire valuation is computerized under the Optical Mark Reader (OMR) and there was absolutely no chance for any error.

9. After the written examination in which the marks are assessed and candidates are listed based on merit, there will be a certificate verification based on merit and communal reservation by following roster system. After verification of all certificates, upto seven marks are added as weightage marks out of which four are marks awarded for the period of wait in Employment Exchange and three for teaching experience of relevant classes. For the year 2006-2007, the vacancies were notified strictly in accordance with the communal roster as per G.O.Ms.No.85 Personal and Administrative Reforms dated 26.05.2000 and G.O.Ms.No.105 Personal and Administrative Reforms Department dated 20.06.2000 and the third respondent has notified the vacancies in accordance with the Government letter dated 26.06.2006 in all Tamil and English dailies inviting applications with the last date for receipt of application as 11.08.2006 and fixing the date of competitive examination as 17.09.2006. Based on the advertisement the third respondent has received 46,000 applications for recruitment to fill up 659 posts and therefore according to the respondents if they are not permitted to proceed with the examination the large number of candidates will be affected.

10. It is also the case of the respondents that the syllabus given for the purpose of written examination is also to facilitate the people like petitioners who have completed their Post Graduation 20 years ago and the candidates who have registered in the Employment Exchange in Tamil Nadu who are also entitled to participate. Since it is the method of competition, this system has worked well for the past six years without complaints. It is also the case of the respondents that any candidate belong to any community can apply even at the age of 57 years, since the age of superannuation of the Government Servants is 58 years. It is also the case of the respondents that while the freshers are not given weightage marks during certificate verification, the old candidates like that of the petitioners are given benefit of the weightage marks. As a person who is desiring to teach the students in the High School and Higher Secondary School Level, the petitioners must certainly equip themselves with the modern standard and mere registration in the Employment Exchange does not ensure in the right of appointment without undergoing the selection process as per the policy of the Government. The syllabus for the written examination is designed appropriately by keeping in view the academic requirements of teachers for teaching class VI to XII as per the new and improved syllabus system and the said syllabus were approved by the Government. The petitioners have got every opportunity to update their knowledge.

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11. It is also the case of the respondents that the Government will not take into consideration the Employment seniority even in respect of Lecturers in the Government Arts and Science Colleges and the Government has not yet notified the vacancies for the recruitment of Lecturers in the Government Arts and Science Colleges for the year 2006 - 2007, since certain clarifications are pending. It is also the case of the respondents that the similar relief prayed before the Tamil Nadu Administrative Tribunal in 2001 in O.A.No.6250 of 2001 etc., batch was dismissed by the Tribunal on 07.01.2003 stating that the employer has got a right of choosing the method of selection, however subject to the reservation policy based on the requirement of efficient teachers. It is also stated that a similar case filed in 2004 before this court in W.P.No.4116 of 2004 was dismissed on 03.03.2004 holding that it is for the recruitment agency to decide about the qualification required for the persons who have applied for the recruitment and also to decide about the mode of test and held that the mode of test is not arbitrary.

12. A reply affidavit has been filed on behalf of the petitioners especially in W.P.No.25227 of 2006. The petitioner would state that the counter affidavit filed by the respondents are contrary to the earlier Government Orders. In this regard, the petitioner would state that the earlier Government Orders based on which the policy of selection was introduced wherein the method of selection was by Employment Exchange seniority apart from interview and there is no proper reason for the change of policy, apart from reiterating that there cannot be different yardstick for the appointment of college Lecturers and the School teachers by the same third respondent board. While the respondent would state in the counter affidavit that the present policy is based on the latest teaching development, even in the impugned notification it is stated that the syllabus for the written examination is as that of the year 2001 - 2002. Therefore according to the petitioners, the written examination is only a farce and there is absolutely no reason for switching over from earlier method of recruitment to the new method.

13. It is also the case of the petitioners that the candidates can take special coaching to appear for written competitive examination, the same would deprive the rural candidates and people from the poor strata of the community who aspire such appointments. It is also the case of the petitioners that having deduced a policy of giving weightage marks for previous experience and the seniority in the registration in the Employment Exchange, the said benefit has not been extended to all candidates but restricted only to candidates who have come within the short listed category on the basis of the marks obtained in the written examination only and therefore according to the petitioner it is a clear case of arbitrariness, violative of the principles of equality and natural justice.

14. It is also the case of the petitioner that the allegation of the respondents in the counter affidavit that it is the policy of the

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Government in the changing educational pattern from the present year onwards has no basis whatsoever by referring to the clause in the advertisement itself stating that the syllabus for the examination was as that of the old syllabus of the year 2001 - 2002. Therefore the averment as if the examination is for the purpose of making proper selection is only an unbelievable story. As far as the decisions given earlier in the Tribunal and also in the writ petition, the petitioners would submit that they are distinguishable by the facts and circumstances individually.

15. Mr.S.Ayyathurai learned counsel appearing for the petitioner would submit that while admittedly hitherto the policy of the Government in making recruitment of school teachers as it is continued in respect of college Lecturers as on today was by sponsorship from Employment Exchange and interview, there is absolutely no reason for switching over to a new process of written examination. The learned counsel also would contend that while the respondents would say that the selection is based on reservation policy namely by adopting roster system, a reference to the advertisement would show that in majority of cases the required number of vacancies to each subjects is less than 50 and therefore, the opportunity of the Schedule Tribe candidates in getting selected is made impossible. Therefore according to him the concept of reservation is to give adequate representation to the depressed class of people and this method only deprives the Schedule Tribe candidates and therefore the impugned notification is to be set aside on the basis that the reservation policy is not properly implemented.

16. The learned counsel also would attack the method of selection given in the prospectus and notification. When admittedly the marks obtained in the written examination is stated to be the sole criteria for short listing the candidates, it is strangely stated that there will be a certificate verification and after certificate verification is over, the list is prepared and then the weightage marks are added in respect of experience as well as the registration in the Employment Exchange which means that it totally deprives the persons who have registered with employment exchange and completed the qualifying examination 20 years ago like that of the petitioners from coming within the preview of zone of consideration. It is the further case that among the candidates like petitioners who have completed their qualifying examinations 20 years ago and are eligible even as on date for consideration to the appointment and also registered under the employment exchange are arbitrarily discriminated by creating a class among themselves namely that those persons who have registered under the Employment Exchange with experience and have come within the zone of consideration after certificate verification and those who do not come under the certification verification while both of them are equally situated. Therefore, according to the learned counsel for the petitioners it amounts to classification within the class which is not permissible and is violative of the Article 14 of the Constitution of

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India. The learned counsel also would submit that while admittedly in respect of the appointment of the College Lecturers, the policy of written examination has not been followed by the third respondent, there cannot be a different yard-stick in respect of appointment of school teachers by implementing the written examination system and therefore according to the learned counsel for the petitioners it is again discriminatory in character. It is also pointed out by the learned counsel for the petitioners that the respondents have not even stated in the counter affidavit that the method of written examination is suitable for school teachers. On the other hand the interview will be sufficient for college Lecturers.

17. The learned counsel for the petitioners also would refer to a letter of the Secretary to Government, School Education Department dated 10.09.2001 under which while speaking about the policy of written examination, the Secretary would state that in respect of identification of rural candidates for giving weightage marks clarification will be issued after the Government takes a decision and therefore the same need not be made in the advertisement. However, as on date no such clarification has been issued and therefore according to the learned counsel, the policy is not completed. The learned counsel also would rely upon the rules of procedure of the Teachers Recruitment Board issued in 1988 in which it was stated while explaining about the method of selection under Rule 5 that the same is on the basis of total marks awarded in the interview to be conducted by the board which includes the weightage marks which are given under Rule 7. The awarding of weightage marks were issued by the Government under various orders from 1989 to 1999 and the interviews so far has been considered to be a criterion for selection process. The learned counsel would submit that method of selection was switched over from oral interview to written examination and oral test in 2001, the said transformation took place by virtue of G.O.Ms.No.210 School Education Department dated 07.12.2001. If it is based on the said G.O., the present policy of continuation of written examination alone has been deduced, according to the learned counsel for the petitioner there are lot of difference between G.O.Ms.210 dated 17.12.2001 and the present policy. He would also quote that while the G.O.Ms.No.210 says that the maximum marks for objective type of paper is 100 and the selection is made on subject wise, the said G.O. categorically states that it was decided as a policy of the Government to conduct competitive written examination for recruitment for school teachers on the same pattern of recruitment of college Lecturers, that was the decision because at that time in respect of college Lecturers the selection was by written examination and thereafter the selection to the college Lecturers was by the oral interview. Therefore according to the learned counsel, even a reading of G.O.Ms.No.210 dated 07.12.2001 cannot support the case of the respondents.

18. According to the learned counsel for the petitioner Mr.S.Ayyathurai, the said G.O.Ms.No.210 dated 07.12.2001 is referable to

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the executive instructions as per the Article 162 of the Constitution of India.

19. According to the learned counsel even if a reference is made to the policy decision for the year 2006-2007 as filed by the respondents in their typed set of papers, there is no change between the policy which was effected in G.O.Ms.No.210 dated 07.12.2001 and the present policy and therefore by applying G.O.Ms.No.210, what is now done for the college Lecturers have to be done for the school teachers also and according to him the policy which is stated now is only perverse in nature. The learned counsel also would refer to the order of the Tamil Nadu Administrative Tribunal stating that the reading of the orders of the Tribunal would show that the Tribunal has not decided the issue on merits. Mr.V.S.Kesavan has also adopted the said argument of Mr.V.Ayyathurai.

20. On the other hand Mr.M.Sekar, learned Special Government Pleader appeared on behalf of the respondents would states that it was by G.O.Ms.No.1320 dated 17.08.1987, the process of selection which were entrusted with the Tamil Nadu Public Service Commission was transferred into the Teachers Recruitment Board. The rules were framed in G.O.Ms.1223 Education Department dated 12.07.1988 enumerating the rules of procedure for Teachers Recruitment Board under which the oral interview was a method of selection, of course subject to the weightage marks. It was on 07.12.2001 when G.O.Ms.No.210 has introduced the method of written competitive examinations to improve quality of teachers and that was the transformation period. It is true that at that time the college Lecturers were also appointed based on written examination. In fact pursuant to the said G.O.Ms.No.210 dated 07.12.2001 when a notification was issued by the third respondent in August 2001, that was challenges before the Tamil Nadu Administrative Tribunal in the batch of original applications in O.A.No.6250 of 2001 etc., batch and ultimately the Tribunal after elaborate consideration of the entire facts has found that to enunciate the policy of recruitment is for the employer and holding that it is for the petitioner to compete with the similar persons in the examinations, has dismissed the application on 07.01.2003. The subsequent batch of original applications filed in O.A.No.6183 of 2001 also were also dismissed by the Tamil Nadu Administrative Tribunal by an order dated 29.08.2003 that the prescription of written test cannot be arbitrary. It was against the said decisions of the Tribunal when one of the applicant have moved this Court, the Division Bench in W.P.No.4116 of 2004 by its order dated 03.03.2004 has held that it is for the recruitment agency to decide about the qualifications required and also the mode of tests to be conducted and in view of the same the writ petition was dismissed.

21. According to the learned Special Government Pleader, when merits is the criteria, the Government has decided the written examination to decide about the merits, and it is not for the

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petitioners to challenge the said policy, since it is certainly a fool-proof method and if really the petitioners are meritorious, it is for them to prove their merit and ability. The learned Special Government Pleader would also submit that while the selection is made as per the communal roster system and it is made by subject wise cut of marks. According to him there are three stages of selection namely

1) Based on the marks obtained by all candidates, a merit list is evolved irrespective of the communal character of the candidates which is called rank list and it is made subject wise.
2) The second stage is that a short list is prepared based on the required number of vacancies in each subjects on the basis of merits and applying the communal rotation after making the certification verification. It is during this stage by verifying the certificates if the person are found not qualified they are eliminated and in that place the persons according to the merit list are inducted based on roster requirements.
3) The last list is the selection list which is effected after the certificate verification is over and it is at that stage the weightage marks are included in respect of the candidates who have registered in the Employment Exchange to whom the maximum of weightage marks is four and also in respect of the previously qualified teaching candidates in respect of the which the maximum weightage marks is three and after adding the weightage mark the final list is prepared.

22. Therefore according to the learned Special Government Pleader, this method of selection is purely based on merit because the entire selection is based on merit list namely the first stage from which by adopting a communal roster system of 100 point roster and also the certificate verification system the selection is made and thereafter the weightage marks are considered. According to the learned Special Government Pleader, this method is followed from 2002 - 2003 onwards based on G.O.Ms.No.16 School Education Department dated 05.02.2002 which was in addition to in earlier G.O.Ms.No.210 on 07.12.2001 and the said G.O. stood remain unchallenged as on date and therefore the present notification which was based on the said G.O. cannot be questioned. It is also the submission of the learned Special Government Pleader that in fact the third respondent is maintaining the subjectwise roster book also and he has produced the roster book also. The learned Special Government Pleader would submit that the roster being the continuous roster under 100 point roster system is being followed and there can be no complaint about the same. The learned counsel also would state that as stated above, pursuant to the notification 46,000 candidates have applied thoroughout the state of Tamil Nadu and they are eagerly awaiting for writing examinations on 17.09.2006 and they must be permitted to undergo the same, otherwise there will be loss to the larger interest of the candidates who have prepared to undergo the written examination system.

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23. The learned Government Pleader also would rely upon the judgment of the Hon'ble Apex Court reported in JT 2000 Supll.2 Page 526 (Praveen Singh Vs. State of Punjab and Others).

24. The learned Special Government Pleader has also produced a model selection papers effected in the year 2005-2006 as to how the selection process was made based on the written examination and also by following the roster system. According to him by applying the 100 point roster, by taking into account each of the subjects based on the required number of candidates to be appointed, and strictly in accordance with the roster, the number of candidates were selected. He would also submit that the questions in respect of the examination to be commenced on 17.09.2006 have been set and it is by virtue of order of stay granted by this Court, the further proceedings have been stopped. According to the learned Special Government Pleader, even admittedly the petitioners themselves have not questioned the roster application and therefore that issue need not be decided here.

25. Mr.S.Aiyathurai as also Mr.V.S.Kesavan, learned counsel for the petitioner in W.P.No.30741 of 2006 while reiterating their earlier contentions would submit that the scope of judicial review will be extended in cases where there is a patent discrimination. They would also submit that the respondents should take note of the fate of hundreds of candidates like that of the petitioners who have qualified themselves much earlier but still eligible to compete for the post of teachers and by passage of time if they are compelled to be assessed based on the written examination on the subject, that would only be discriminatory in nature.

26. The learned counsel for the petitioners would rely upon the Judgment of the Hon'ble Apex Court reported in 1994(1) S.C.C 150 to substantiate his contention that weightage marks should be given for the benefit of all the candidates similarly situated as that of the petitioners. They would also submit that the admission of the respondent, that weightage marks is given only after the second stage namely the certificate verification and that is of absolutely no use. That apart they would submit that the roster system has not been properly implemented. According to them even though it is not raised as a point in the grounds, being the legal issue they are certainly entitled to point out to this court, when the roster is not properly applied.

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27. I have heard the learned counsel for the petitioners as also the learned Special Government Pleader and perused the entire records produced by the learned Special Government Pleader.

28. At the out set, to understand the implication of the present issue it is necessary to point out some of the historical events in brief in respect of the selection process followed hitherto by the

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respondents in respect of appointment of teachers in Tamil Nadu. It is the admitted case that originally the process of selection of teachers was entrusted with the Tamil Nadu Public Service Commission. It was by virtue of G.O.Ms.No.1319 Education Department dated 17.08.1987 the Government of Tamil Nadu has excluded from the preview of the Tamil Nadu Public Service Commission Regulation 1954 framed under Article 320(3) of the Constitution of India in order constitute a separate board for recruitment for the post of Teachers in the school education department by making rules as per proviso to the Article 309 of the Constitution of India. It was based on the said Government order the following categories of post of teachers in the school education department were excluded from the preview of Tamil Nadu Public Service Commission with effect from 17.08.1987.

"Tamil Nadu Higher Secondary Educational Service

Class I	(1)	Teachers in Academic Subjects.
Class II	(2)	Teachers in Lecturers Physical Directors and Physical Directresses in Higher Secondary Schools

Tamil Nadu School Educational Subordinate Service.

Class and Category		
Class I	1	Deputy Inspector of Schools and School Assistants.
Class II	1	Pandits in Tamil
Class III	1	Pandits and Munch is in languages other than Tamil Grade I
Class VI	1	Regional Inspectors of Physical and Physical Directors/Directresses."

29. Accordingly, a separate Teachers Recruitment Board was constituted as per G.O.Ms.No.1320 dated 17.08.1987 with a Chairman and Member apart a Member Secretary. Thereafter, the Teachers Recruitment Board Rules have been framed and approved in G.O.Ms.No.1223 Education (B2) Department dated 12.07.1988. As per the said Rule the method of selection was introduced in Rule 5, which runs as follows:

"5. METHOD OF SELECTION

(a) The selection of candidates shall be on the basis of the total marks awarded at the interview to be conducted by the Board which includes the marks as specified in Rule 7.

(b) Minimum marks qualifying for selection shall be as follows:-

iPosts in the Tamil Nadu Higher Secondary Educational Service.

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Candidates belonging to the Schedule Castes, Schedules Tribes and Backward Classes.	30% of the total marks in the interview.
Other communities	40% of the total marks in the interview.

iiPosts in the Tamil Nadu School Educational Subordinate Service:

Candidates belonging to the Schedule Castes, Schedule Tribes and Backward classes	30% of the total marks in the interview.
Other Communities	40% of the total marks in the interview.

(c) Subject to the above provisions and subject to the rule of reservation of vacancies, the Board shall select the required number of candidates based on the rank assigned to them which shall be on the basis of the total marks awarded under sub-rule (a).

(d) In the event of two or more candidates securing equal marks at the interview, preference shall be given to the candidates with reference to their dates of birth, the one born earlier being given the higher preference."

30. Therefore, the method adopted by the Teachers Recruitment Board initially was no doubt the selection on the basis of interview conducted by the board apart from the weightage marks given based on the registration in the Employment Exchange. It is also admitted that the rules of reservation have been followed from the beginning in the selection process. It is also admitted that in cases were more than two candidates securing equal marks in the interview, preference is given based on the date of birth. The rule also contemplates the manner of performance in detail in respect of awarding marks. The method of said oral interview has been followed upto 09.11.2001 of course giving various instructions from time to time in respect of the methodology to be followed as seen in the various orders from 1989 to 2001.

31. It was for the first time in 2001 the Government has introduced the policy of conducting competitive written examination and oral test interview for selection of teachers through Teachers Recruitment Board in the Government High Schools and Higher Secondary Schools. That was by way of G.O.Ms.No.210 School Education Department, dated 07.12.2001 and the same is referable to the executive power of the

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state as enstrained under Article 162 of the Constitution of India. It is also relevant to point out that at that time when the said G.O.Ms.No.210 was passed in 2001, in respect of the recruitment of college Lecturers also the method of appointment was by way of competitive written examination. Under the state Government Order, the Government has inantiated the policy by accepting the proposals of the Chairman of Teachers Recruitment Board which includes the removal of age limit for application for appointment of teachers, prescribing written examination as a method of selection by replacing the sponsorship through Employment Exchange, evaluation and preparation of subject-wise ranking list apart from the maximum 12 marks to be given as weightage on various scores namely ability, extracurricular activities, rural area, Employment Exchange, etc., and that rule is in existence even as on today. Therefore, it is relevant to extract the Rule 3 in the said G.O. which runs as follows:

"3. The Government after careful consideration accepts the proposals of the Chairman, Teachers Recruitment Board and direct that,

i The age limit for recruitment of teachers under the two Tamil Nadu Educational Subordinate Service Rules and Tamil Nadu Higher Secondary Educational Service Rule have been removed vide reference No.9 ad 10 read above.

ii An open recruitment Examination to all candidates with BT/PG qualification including Language Pandits with BEd., who are duly registered for the basic qualification prescribed in the respective special rules in the Employment Exchange in Tamil Nadu shall be held. The written examinations will be conducted separately for BT and PG Assistants. PG Assistants are otherwise eligible to write the written examinations at Graduate level for appointment as BT Assistants provided they are registered for BT separately at the Employment Exchange.

iii The revised procedure of recruitment replaces the existing system of recruitment through candidates sponsored from Employment Exchanges only based on seniority of registration at these Exchanges.

iv The duration of written examinations in 03 hours. There will be one objective type paper for total marks 100. Of these 20% of marks shall be for teaching methods, 75% for the concerned subject and 5% marks for general knowledge. The syllabi will be prepared by the Teachers Recruitment Board with the aid of Teaching experts in the relevant subjects and widely circulated and Gazetted, if required.

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v The Written Competitive Examinations may be conducted in all the District Centres in the state to facilitate the rural candidates, utilizing the Services of the Director of School Education.

vi The Teacher Recruitment Board shall be the nodal agency and the Director of Government Examinations shall assist in the conduct of examinations, evaluation and preparation of subject-wise rank list will be undertaken by the Teachers Recruitment Board.

Based on the relative ranking and communal rotations, the Teachers Recruitment Board will publish the list of candidates qualified for the oral test at the Ratio of 1:5 i.e., five candidates for each vacancy subject to availability of candidates.

vii The oral test shall carry maximum of 12 marks divided as follows:

1.	Ability to express ideas in the subject (to demonstrate teaching)		4
2.	Extra curricular activities NCC/NSS/Sports/Fine Arts(1/2 Marks each)		2
3.	Rural area weightage		3
4.	Employment Exchange Registration		3
	3 to 5 years	1	
	6 to 10 years	2	
	Above 10 years	3	
	Total Marks		12

Rural Area weightage will be identified by the Government separately, till such time this weightage may be added to the item-1 in the column above.

viii Examination Fee: The application form will be designed by the Chairman, Teachers Recruitment Board and will be published in the leading Tamil Dailies. They can be filled up by the candidates with photocopies of prescribed certificates like, Qualifications, Community, Registration of Employment etc., and submit to the Chief Educational Officers of the District after preliminary scrutiny the Hall tickets to the centers will be sent by the Chief Educational Officers to the candidates for centers devised by them. The Examination fee will be Rs.300/- for candidates of all community. For SC/ST candidates it will be Rs.150/- only. Blind candidates may also be permitted to pay as in the SC/ST candidates. There

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are costs of printing, advertising, examination, valuation and postage etc., involved in this operation. Hence a fee structure is considered reasonable.

ix Date of Examination: The date of written examination will be decided by the Teachers Recruitment Board in consultation with Director of Government Examinations, who is appointed as the nodal Agency for the written examination. The entire selection process will be completed within the shortest period to enable the rural children get qualified teachers at the earliest.

x Teachers of other Government Department. The PG and BT Teachers, Language Pandits of Adi-Dravida Department, Kallar Reclamation Department and Municipal, Corporation Schools who are also recruited by Teachers Recruitment Board annually can also be recruited simultaneously through the above single Recruitment Programme."

32. Subsequently, a proposal was sent by the Teachers Recruitment Board to the Government for making some modifications in G.O.Ms.No.210 dated 07.12.2001 for the purpose of implementing effectively the Sarva Shiksha Abiyan Programme of the Government of India by recruiting B.T. Grade teachers as Block Resource Teachers under the said scheme for the Academic year 2002 - 2003 under a common written competitive examination followed by certificate verification. It was considering the said suggestions of the Teachers Recruitment Board the Government has passed G.O.Ms.16 School Education Department dated 05.02.2002 in partial modification of G.O.Ms.No.210 School Education dated 07.12.2001 by issuing the following operative orders:

"I. The age limit for recruitment of the teachers under the Tamil Nadu School Educational Subordinate Service / Higher Secondary School Educational Services Rules which have been amended in G.O.Ms.No.174, School Education(M2) Department, dated 12.10.2001. and G.O.Ms.No.175, School Education (HS) Department, dated 12.10.2001 shall be adopted.

II. An open objective type multiple choice written recruitment examination to all candidates with B.A./B.Sc. With B.Ed., qualification including language pandits who are duly registered for that basic qualification in the employment exchanges in Tamil Nadu can be held. The persons qualified to be P.G.Assistants, but holding registration in the employment exchange for the post of B.T.Assistants, are also eligible to compete in the above recruitment examinations.

III. The first preference for recruitment shall be that of Block Resource Teachers' posts followed by the regular posts of graduate Assistants and language Pandits.

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IV. The candidates may be given the option to apply for either posts or for both. Once exercised this option shall be final.

V. Short list of candidates shall be prepared for the respective posts on merit-cum-roster; and those opting for both posts shall be absorbed in the short list based on the merits and roster."

33. It was in that Government Order, the Government has formulated the duration of written examination for three hours with objective type papers for 150 marks consisting of 110 for the subject, 30 marks for educational methodology and 10 marks for general knowledge. The subsequent relevant paragraph in the said G.O. enunciating the change in policy as follows:

"6. The duration of written examination will be 3 hours with an objective type paper for total marks of 150 consisting of 110 marks for the subject, 30 marks for educational methodology and 10 marks for General Knowledge. The syllabi for the examination prepared by the Teachers Recruitment Board with the aid of teaching experts in the relevant subjects will be widely circulated for the use of the candidates. The written competitive examination can be conducted in all the districts Centres in the State to facilitate the rural candidates, utilising the services of the Director of School Education.

7. The Teachers Recruitment Board shall be the Nodal Agency and the Directorate of Government Examination shall assist in the conduct of examination. The question papers for the written examination evaluation and preparation of subject wise rank list will be undertaken by the Teachers Recruitment Board.

8. Based on the relative meritorious ranking and communal rotations the Teachers Recruitment Board shall publish the list of candidates qualified for the certificate verification at the ratio of 1:2 i.e.two candidates for each vacancy subject to availability of candidates fulfilling the principles of para 4 above.

9. There shall be no oral test for the above short listed candidates. However, weightage marks on the following basis will be awarded after the certificate verification:-

I	For Registration in Employment Exchange	0 to 1 year	Nil
		1 to 3 years	1

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		3 to 5 years	2
		5 to 10 years	3
		Beyond 10 years	4
II	Sports	1	
III	NCC/NSS/Scouts and Guides	1	
IV	Fine Arts, Elocution, Painting, etc.	1	
V	St.Jones Ambulance / Red Cross, etc.	1	
VI	Rural Areas Schools at School level study	1	
VII	Gold Medal holders at Degree level or B.Ed., level or both	1	
	Total		10

10. The rural area weightage will be given for candidtes who have studied in the schools listed either middle, high or higher secondary courses. Orders will be issued separately.

11. The final selection of the candidates on merit and communal roster will be based on the aggregate marks in the written examination and the weightage marks awarded during the certificate verification."

34. It is also seen that there was a subsequent change in respect of paragraph 8 of the G.O.Ms.No.16 dated 05.02.2002 stating that the ratio as 1:2 namely two candidates for each vacancy as that of 1:1 was effected as it seen in the letter of the Government dated 11.03.2002. While G.O.Ms.No.16 dated 05.02.2002 has given weightage mark in respect of Employment Exchange after certificate verification to the maximum four marks as stated in para 9 of the said G.O., by a various subsequent Government Orders including G.O.Ms.No.100 School Education (Q2) Department dated 10.08.2004, in addition to the weightage mark on the Employment Exchange as stated above the weightage marks upto maximum three have been directed to be awarded to those candidates who have worked in the recognized schools between VI to XII standards. Therefore, the policy of the Government as on today in respect of selection of teachers in the High Schools, Higher Secondary Schools is as introduced in G.O.Ms.No.210 School Education Department dated 07.12.2001 and as partially modified in G.O.Ms.No.16 School Education Department dated 05.02.2002 and subsequently clarified by the letter of the Government No.5006/Q2/2002-I dated 11.03.2002, G.O.Ms.No.107 School Education Q2 Department dated 24.07.2003, G.O.Ms.No.100 School Education Q2 Department dated 10.08.2004 as I have enumerated above.

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35. Admittedly, it is pursuant to the said policy of the Government as I have stated above the impugned notification came to be issued by the third respondent, apart from the prospectus issued pursuant to the notification.

36. At this stage it is relevant to point out, as correctly pointed out by the learned Special Government Pleader that pursuant to the said G.O.Ms.No.210 dated 07.12.2001 when the notification was issued by the third respondent to proceed to make selection on all most the same pattern as is done presently by way of conducting a written examination by dispensing with the procedure of selection by oral interview, that was subject to challeng before the Tamil Nadu Administrative Tribunal by a batch of candidates. There also the applicants have raised the same points namely that by passing of time, the applicants have lost memory of the subjects especially they are not with upto date well-versed knowledge on the subjects and consequently not in a position to compete with the new graduates who are afresh from college. As per the said G.O.Ms.No.201 has enumerated above, the marks were awarded in the following manner namely 75% to the main subject, 25% to the methodology and 5% to the general knowledge and any candidates who are below 57 years are made eligible to apply. There also exactly the same contention was raised stating that the Government should adopt the previous procedure of seniority of registration in the Employment Exchange which is a correct policy decision which was also based on merits of the candidates. While dismissing the batch of applications in O.A.No.6250 of 2001 etc., the Tamil Nadu Administrative Tribunal by an order dated 17.01.2003 has observed as follows:

"10. The applicants have to prove their efficiency and their competence by competing with similar persons in the examination to be held and therefore there is nothing wrong or illegal about the policy decision taken by the Government. Moreover it is fundamental principles that an Employer even a Government is entitled to select persons based on merits and performance and when reservation policy is also not given up, these persons cannot be heard to complain that merit shall not be criterian for selection. As already stated due weightage is given for senior people who have got themselves registered in the Employment Exchange for long years and weightage is given in the oral interview and the legitimate rights and expectations of these persons is taken care of."

37. The method of recruitment as stated above was also challenged by some of the Associations before the Tamil Nadu Administrative Tribunal in the batch of cases in O.A.No.6183 of 2001 etc., batch and the Tribunal by an order dated 29.08.2003 has also dismissed all the said applications with the following observation:

"7. The Associations and applicants have obtained stay for prescribing written test on the ground that they have forgotten the subject and they

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have been waiting for employment for number of years and therefore they may not able to perform well in the written test. In other words these persons are praying for premium for ignorance and inefficiency. This cannot be allowed at the cost of public interests."

38. One of the applicant before the said Tamil Nadu Administrative Tribunal has moved this Court by filing W.P.No.4116 of 2004, and this Court has dismissed the said writ petition by order dated 03.03.2004 and the order runs as follows:

"We see no merit in this writ petition. It is for the recruiting agency to decide on the qualification required of the persons who applied for the recruitment. It is also for that agency to decide on the mode of test. We do not find that mode to be in any way arbitrary. The writ petition is dismissed."

39. Even though an attempt is made on behalf of the petitioners that the issue raised in the said original application as well as the writ petition before this court were on the different facts and circumstances, a reading of the said detailed orders of the Tribunal shows that in fact some of the candidate have raised objection to the validity of the advertisement issued for recruitment pursuant to G.O.Ms.No.210 dated 07.12.2001 same as that of the present contention and the Tribunal has dealt with the same and ultimately decided the issue which has been confirmed by the Division Bench of this Court. The materials available and produced on the side of the respondents show the said factual position.

40. Now in continuation of the said process of selection, for the vacancies which arose as on 01.06.2006, the Government as well as the third respondent has notified the vacancies of postgraduate Assistants / Physical Education Director Grade I in Government Higher Secondary Schools 2006 - 2007 as 659 and in the advertisement, the respondents have also given the subject-wise vacancies based on the reservation and roster system. As per the notification, the application forms along with prospectus have been issued in the Office of the Chief Educational Officers of all the 30 districts in Tamil Nadu and the written examination is proposed to be held on 17.09.2006 in all the 30 districts head quarters. The prospectus issued based on the notification while speaking about the scheme of examination states as follows:

"11. Scheme of Examination: The written examination will consist of a single paper of 3 hours duration with 150 marks. The question paper will be of objective type with multiple-choice questions. The marks allotted to the Main Subject, Educational Methodology and General Knowledge are as follows:

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Main subject	110 marks
Educational Methodology	30 marks
General Knowledge	10 marks

The candidates are required to answer the questions in the special OMR answer sheet provided, by shading a single answer for each question in blue or black ball-point pen only. The syllabus for the subjects as published in Gazette No.611, dated 10.09.2001 and Gazette No.356, dated 30.5.2002 will be covered in the Examination. The candidates will be provided with the yellow copy of the answer sheet for their reference. The decision of Chairman, Teachers Recruitment Board on eligibility of the candidate to sit for the Examination will be final."

41. Accordingly, the total number of marks of 150 are divided into 110 marks towards main subject, 30 marks towards educational methodology and 10 marks towards general knowledge. Paragraph 13 of the prospectus while speaking about the publication of the written exam result states that a first list with Roll Numbers mark-wise of all candidates will be published followed by the second list of Roll Numbers short listed for the purpose of certificate verification, based on written examination marks and the communal reservation. The said paragraph 13 runs as follows:

"13. Written examination Results: (i) The Roll-Number-wise Mark List of all candidates, and (ii) Roll numbers of candidates short-listed for Certificate Verification, based on written examination marks and the communal reservation, will be published in the Notice Board of TRB and in the website of TRB viz. http://trb.tn.nic.in. The publication of results will be announced through Press / Media.

Note: If more than one candidate secures the lowest cut-off mark for the particular communal turn, all such candidtes will be called for CV. Hence the number of candidates called for CV may be slightly higher than the number of vacancies."

42. This is followed by the next process of certificate verification among the short listed candidates as stated above i.e., as per paragraph 14 runs as follows:

"14. Certificate Verification: Candidates short-listed as above shall bring the original and attested copies of all certificates as stated in the call letter for Certificate Verification. All Certificates (except Teaching Experience) should have been issued prior to the last date for submission of filled-in Applications. Certificates issued after the cut-off date will not be considered. Teaching experience certificate issued by Headmaster / Principal of the School should be countersigned

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by the Inspecting Officer cocerned. (Specimen copy of Teaching Experience Certificate is attached in Annexure - III).

(a) Community Certificate: Permanent Community Card Certificate obtained from the under-mentioned authorities on or before the last date for submission of filled in applications, is necessary for candidates claiming reservation category.

i. ST - Revenue Divisional Officer dated after 11.11.1989

ii. SC - Tahsildar of native taluk of the candidate

iii.BC/MBC/DNC - Headquarters Deputy Tahsildar or Special Deputy Tahsildar.

Note: Married women should possess Community Certificate issued in father's name only.

(b) Blind candidates should possess certificate in prescribed format from Medical Officer not below the rank of Civil Surgeon for one of the following:

(i) Total absence of sight, or (ii) Visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses or (iii) Limitation of the field of vision subtending an angle of 20 degree or worse. One-eyed blind persons cannot claim reservation against Blind or PHO category.

(c) Orthopaedically handicapped candidates should possess certificate in prescribed from Medical Officer not below the rank of Civil Surgeon for at least 40% disability."

43. The last phase of selection is awarding of weight-age marks i.e.,after certificate verification, the weight-age marks are added to the candidates based on which the final list is prepared i.e., as per paragraph 15 which runs as follows:

"Weightage marks: Weightage marks as detailed below will be given after Certificate Verification for the short-listed candidates. These marks will be added to Written Examination marks for preparing the final merit-cum-communal Selection list.

		Number of Years	Marks

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i	Period of wait after registration in the Professional & Executive Employment Office, Chennai 4	1 to 3 years 3 to 5 years 5 to 10 years 10 years and above	1 2 3 4
ii	Experience of teaching in 11 & 12 Std.in any recognised School	1 to 2 years 2 to 5 years 5 years and above	1 2 3"

44. Therefore, it is clear that in the selection process the respondents have made out the following steps:

1. Based on the marks obtained by all the participating candidates who are stated to be nearly 46,000, the list of entire candidates who have participated along with the marks secured by them along with their roll number will be published as a first stage which is called mark list and that list is irrespective of communal roster and only based on the marks obtained by each of the candidates based on merits.

2. Thereafter, the respondents by considering the subject-wise requirement of vacancies by applying the policy that one candidate is to be selected for one vacancy as it is stated earlier, short list the required number of candidates based on the vacancies for each of the subjects by applying the communal roster system namely the hundred point roster. Therefore, in the second stage the selection is almost completed in the sense that admittedly the policy is that for each of the vacancy a candidate is selected and therefore if a particular subject for example in Botany there are 38 vacancies, by applying the communal roster system and calculating the required number of candidates to be accommodated in general turn, Backward Class, Most Backward Class, Schedule class and Schedule Tribe, the required number of candidates are selected and on the basis of this a certificate verification is made. Therefore, certificate verification is made being necessary formality, since it is only an ascertainment of the correction of declaration made by the candidates at the time of writing examinations. It is clear that in the second stage which is called certificate verification stage the short list of the required candidates are completed.

3. It is only in the last stage where the final list which is to be finalized, among the candidates who are selected after certificate verification, the weightage marks are added to them.

45. Therefore, it is clear that the weightage marks can be added only to those candidates who are selected based on the necessary

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requirements in each of the subjects, who have passed the qualifying examinations 10 years or 15 years before and who have registered themselves under the Employment Exchange. Therefore, the procedure as it is introduced in various policies of the Government in various G.Os. are very clear that the benefit of weightage marks in respect of old candidates regarding their teaching experience in various approved schools and registration in Employment Exchange are not given to all such candidates who write examination.

46. It is in the light of this situation one has to consider the contention of the learned counsel appearing for the petitioners about the value of such weightage marks as to whether the same is extended to all the candidates who have passed their qualifying examinations much prior namely 10 years or 15 years or 20 years like that of the petitioners and who have also got some experience as teachers in various approved schools. On fact I am completely satisfied as stated above and as admittedly pointed out by the learned Special Government Pleader, that the procedure contemplated under the impugned prospectus and notification denotes that the benefit of weightage marks was not sought to be given to all similarly situated candidates as that of the petitioners at the time of short listing the candidates based on the written examination and were sought to be given only after the short listing is over at the final stage.

47. Even though in respect of the policy decisions this Court normally will not interfere but inasmuch as this policy of adding weightage marks to the candidates in the last stage is capricious and totally arbitrary.

48. Therefore, I am of the considered view that there is a force in the argument of the learned counsel for the petitioner that among the similarly situated candidates namely the candidates like the petitioners who have qualified themselves much earlier namely 10 years or 20 years before and who have put in experience as teachers in recognized schools who are entitled to the benefit of such weightage marks, are sought to be discriminated in the sense that the privilege of weightage marks are made to be applicable only after the selection process is almost over and only to those who cross the second stage of selection.

49. I do not see the nexus between this conduct of conferring the benefits at the last stage and object of conferring the benefit of weightage marks to such of those candidates having passed qualifying examination much earlier and registered with Employment Exchange and also having acquired teaching experience in various recognized schools which is the avowed object of the Government as enshrined in the various

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policies. Therefore, while the policy of conferring such benefits by way of weightage marks is certainly valid and not arbitrary and intended with an object of equalizing and balancing the old candidates with experience with that of the new candidates with alertness in the subjects, but however, while implementing the same the purport of the object is given up since the said benefit is not conferred equally to all the candidates similarly situated.

50. This I am emboldened to state because certainly by extending the weightage marks to all the candidates immediately after the written examination of course based on the communal roster system, it will definitely give opportunity to quite a number of candidates like that of the petitioners, to come within the short list of candidates to be selected and that chance is thwarted by the said clauses in the prospects issued pursuant to the impugned notification while implementing the same. Therefore, I am of the considered view that the benefit of weightage marks should be given to the candidates who are entitled for the same, immediately after the merit list based on the written examination is completed and at the time of short listing during certificate verification however based on roster system and not afterwards.

51. There is one other situation which deserves to be dealt with in this case, for it is a matter of public importance. While it is true that as correctly pointed by the learned Special Government Pleader and who has produced the roster register subject-wise which shows that at least from 2001 - 2002, in respect of the Government teachers for each of the subjects the roster is maintained, one has to understand that the object of the communal roster system is not a process to be followed only in a particular year and it is a continuing process. It is therefore necessarily based on the general policy of the Government of India on roster system that a roster register is always prepared for each department. A reference to roster register produced by the learned Special Government Pleader regarding the Post Graduate teachers in Botany shows that the roster is being maintained. But the problem is that before the impugned notification was issued on 26.07.2006 based on the vacancy as on 01.06.2006. The next vacancy on the communal roster has to be notified for each of the subjects. The 100 point roster as enunciation in G.O.Ms.No.85 Personal and Administrative Reforms (R) Department dated 06.05.2000 which is admittedly applicable contemplate the roster in schedule III of the said G.O. It is specifically stated that while making selection for appointment it must start from serial number 1 in the said schedule on and from the date of applicability of roster system. The relevant provision in the said G.O. which is in the form explanation states as follows:

"Explanation:- The vacancies arising on and from the 6th May, 2000 shall be filled up as per the Schedule III and all selections for appointment

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shall be stated afresh from serial number one in the said Schedule III with effect on and from the said date."

The hundred-point roster given in Schedule III is as follows:

SCHEDULE - III

(See rule 22(c))

1. General Turn
2. Schedule Castes
3. Most Backward Classes and Denotified Communities
4. Backward Classes
5. General Turn
6. Scheduled Casts
7. Most Backward Classes and Denotified Communities
8. Backward Classes
9. General Turn
10. Backward Classes
11. General Turn
12. Schedule Castes
13. Most Backward Classes and Denotified Communities
14. Backward Classes
15. General Turn
16. Scheduled Castes
17. Most Backward Classes and Denotified Communities
18. Backward Classes
19. General Turn
20. Backward Classes
21. General Turn
22. Schedule Castes
23. Most Backward Classes and Denotified Communities
24. Backward Classes
25. General Turn
26. Scheduled Castes
27. Most Backward Classes and Denotified Communities

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28. Backward Classes
29. General Turn
30. Backward Classes
31. General Turn
32. Scheduled Castes
33. Most Backward Classes and Denotified Communities
34. Backward Classes
35. General Turn
36. Scheduled Castes
37. Most Backward Classes and Denotified Communities
38. Backward Classes
39. General Turn
40. Backward Classes
41. General Turn
42. Schedule Castes
43. Most Backward Classes and Denotified Communities
44. Backward Classes
45. General Turn
46. Most Backward Classes and Denotified Communities
47. Backward Classes
48. General Turn
49. Backward Classes
50. Scheduled Tribes
51. General Turn
52. Scheduled Castes
53. Most Backward Classes and Denotified Communities
54. Backward Classes
55. General Turn
56. Scheduled Turn
57. Most Backward Classes and Denotified Communities
58. Backward Classes
59. General Turn
60. Backward Classes
61. General Turn

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62. Scheduled Castes
63. Most Backward Classes and Denotified Communities
64. Backward Classes
65. General Turn
66. Scheduled Castes
67. Most Backward Classes and Denotified Communities
68. Backward Classes
69. General Turn
70. Backward Classes
71. General Turn
72. Scheduled Castes
73. Most Backward Classes and Denotified Communities
74. Backward Classes
75. General Turn
76. Scheduled Castes
77. Most Backward Classes and Denotified Communities
78. Backward Classes
79. General Turn
80. Backward Classes
81. General Turn
82. Scheduled Castes
83. Most Backward Classes and Denotified Communities
84. Backward Classes
85. General Turn
86. Scheduled Castes
87. Most Backward Classes and Denotified Communities
88. Backward Classes
89. General Turn
90. Backward Classes
91. General Turn
92. Scheduled Castes
93. Most Backward Classes and Denotified Communities
94. Backward Classes
95. General Turn
96. Most Backward Classes and Denotified Communities
97. Backward Classes

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98. General Turn
99. Backward Classes
100. General Turn"

52. That apart it also contemplates the providing opportunity to the Physically handicapped candidate, women in each of the roster of reservation based on turn. Therefore, the application of Schedule III under communal roster contemplates that when once the selection started from serial number 1 from the applicability of the roster in 2000 which is a continuing process for the subsequent selection also, the respondents should find out as to who was the last candidate appointed before 01.06.2006 based on the roster system whether he belongs to general turn, Schedule class, Most Backward Class or Backward Class and based on that when a fresh selection based on the written examination to be conducted as per the impugned notification is made the process of applications of roster shall continue. Even though as correctly pointed out by the learned Special Government Pleader that in the impugned notification, taking into consideration of the required number of vacancies to be filled up in each of the subject by applying the communal roster system by way of continuation from 2000 on wards, the vacancies in each of the clause namely general turn, B.C., M.B.C., S.C. and S.T. having notified apart from the turn for Physically handicapped and women, while applying the roster, the respondents shall make application of roster system one by one and not taking each of the group as a whole for the purpose of filling up of the vacancies. For example in respect of the Botany department as the roster register which has been produced before me, in end of 2005 - 2006 the last candidate appointed with turn number 276 belonged to Schedule Caste. Therefore, by applying the roster for the year 2006 - 2007 if total number of candidates required to be appointed in the year 2006 - 2007 is 52, the first candidates shall be from Most Backward Class, that is the first meritorious candidates among the Most Backward Class as per the list arrived at by way of selection during the time of verification. The next candidate to be accommodated should be from Backward Class who is in turn number 278 and like that it has to be followed one by one and it is not open to the respondents to select and appoint all the required number of candidates subject-wise in each of the category namely General Turn, Backward Class, Most Backward Class, Schedule Classes and Schedule Tribes at one stroke. This is relevant because during the certificate verification if in one case a candidate belonging to a particular category either G.T, S.C., M.B.C. or B.C. is unable to satisfy the certificate requirements then the candidates of that category waiting first in the merit list has to be taken into consideration. Such method alone is in consonance with the concept of roster system and also to ensure selection of meritorious candidates in respect of each of the category of candidates on communal roster system.

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53. Now, coming to the validity or otherwise of implementing the policy of conducting written examination as the only method of selection, at the outset I am of the considered view that there is absolutely no reason for the petitioners to believe that the method is improper. On the other hand, it is the most fool-proof method which can be tangibly ascertained based on the performance of the candidates. For, quality can never be scarified in the selection process especially in respect of teachers in the school level in which one can reasonably anticipate that such teachers who seek for appointment at that level are upto to the standard to teach students in an effective manner. The teachers who are going to be appointed for the said posts are going to teach the students based on the existing syllabus as on date and therefore in my considered opinion they cannot be heard to say that either they have forgotten the subject which they have studied earlier or they cannot be equated to the freshers. If that contention is accepted it will in effect enable a person who may not be able to teach the students in the existing era to get appointment which is certainly not in the larger interest of the society. In any event it is also true that while an opportunity is given to persons like petitioners who are also qualified as per the policy of the Government and eligible to be consider for appointment, since age limit has not been prescribed, certainly a balancing system has been evolved for the purpose of equating them with that of the fresh candidates. As I have analyzed earlier it is only with that avowed object, the concept of giving weightage marks to the old candidates based on their experience in the Employment Exchange and also the experience acquired by them in teaching in various schools the incentive marks are added.

54. In my considered view if only the said weightage marks are added to such cases like that of the petitioners at the appropriate place namely immediately after the merit list is evolved and at the time of certificate verification not afterwards, that will definitely satisfy and equate the persons like petitioners with that of the fresheners because the society must be aware of the problem of unemployed qualified candidates like that of the petitioners also. Therefore, on the face of it and subject to the condition which I have enumerated above that the benefit of weightage mark shall be given at the initial stage itself and not after the certificate verification and subject to the condition that the roster must be followed number-wise as I have illustrated above, I have no hesitation to come to conclusion that the method of conducting written examination for selection process is certainly the best method which cannot be disputed.

55. In any event as I have stated earlier the same issue was raised by the similarly situated persons as that of the petitioners and on hearing the same contention the Tamil Nadu Administrative Tribunal has given an elaborate order stating that as far as the evolving the

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policy and the method of selection is concerned it is for the appointing authority and the Court's powers are restricted and the said order has been confirmed by the Division Bench of this Court. It is also relevant to point out that the said practice has been invoked from 2001 onwards when the G.O.Ms.No.210 dated 07.12.2001 was introduced.

56. The issue relating to the weightage marks, the written examination and viva-voce test for admission as well as employment in service came to be considered by the Honble Apex Court in Anzar Ahmad Vs. State of Bihar and others reported in 1994(1) S.C.C.150. That was the case where the State Public Service Commission has issued advertisement, inviting applications for 81 posts of Unani Medical Officers. The selection was made based on marks given in viva-voce and for academic performance by allotting 100 marks for viva-voce and 100 marks for academic performance. It was based on the said selection process the Service Commission has recommended 55 candidates and ultimately when the High Court has quashed the said recommendation and also the selection, on the basis that it has not been shown that any policy decision has been taken by the Commission on the question of allocation of 100 marks for viva-voce, especially in the circumstance that equal marks of 100 for each academic performance as well as viva-voce was sought to be made.

57. While examining the validity or otherwise of fixation of 50% in the interview, the Honble Apex Court has considered the same in the context of

1) Selection for admission to Educational Institutions and 2) Selection for employment in service.

58. While referring to the earlier judgment of the Apex Court held in Ajay Hasia and others Vs. Khalid Mujib Sehravardi and others reported in 1981(1) S.C.C.722, the Honble Supreme Court has extracted the passage wherein the Supreme Court has held that the oral interview should not be solely rely upon and the same may be resorted to as additional or supplementary test. Further, while referring to another judgment of the Apex Court rendered in Lila Dhar Vs. State of Rajasthan and otehrs reported in 1981(4) S.C.C.159 wherein in the selection process 300 marks were awarded for written examination and 100 marks for viva-voce holding that the allocation of 25% of total marks for viva-voce is not improper. The wordings of the Honble Apex Court are as follows:

"9. The decisions of this Court in R.Chitralekha Vs. State of Mysore; A.Peeriakaruppan Vs. State of T.N. Nishi Maghu Vs. State of J & K, Ajay Hasia Vs. Khalid Mujib Sehravardi and Koshal Kumar Gupta Vs. State of J.K. relate to admission to educational institutions and fall in the first category. In Ajay Hasia case it has been laid down that where

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selection is made on the basis of written test followed by interview, allocation of more than 15% of the total marks for interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. Although in that case the Court was dealing with admission to an educational institution viz., Regional Engineering College, a passing reference has been made to "public employment" in the following observation:

"....We would, however, like to point out that in the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification."

10. In the context of selection for appointment to Public Service, viz., Rajasthan Judicial Service, the question was considered by this Court in Lila Dhar Vs. State of Rajasthan. Under the relevant rules selection was to be made on the basis of a written examination carrying 300 marks and viva voce examination carrying 100 marks. There was thus allocation of 25% of the total marks for viva voce examination. The said allocation was upheld as valid. Making a distinction between selection for the purpose of admission to a college and selection for appointment to service, this Court (Chinnappa Reedy,J.)

....If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in Peeriakaruppan Vs. State of T.N. Ajay Hasia Vs. Khalid Mujib Sehravardi and others cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from it being an act of cruelty to those persons."

Ultimately, the Supreme Court in para 14 has held as follows:

"14. These observations would indicate that the matter of weight to be attached to interview and the allocation of marks for interview vis-a-vis marks for written examination can arise when written examination as well as viva voce test are both accepted as essential features of proper selection and there also no hard and fast rule regarding the precise

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weight to be given to the viva voce test as against the written examination, can be laid down and the said weight must vary from service to service according to the requirement of the service. The question of weight to be attached to viva voce would not arise where the selection is to be made on the basis of interview only. In Ashok Kumar Yadav case this Court has held that in the case of ex-service officers viva voce test may be attached relatively greater weight because the personalities of such officers being fully mature and developed it would not be difficult to arrive at a fair assessment of their merits on the basis of searching and incisive viva voce test. But at the same time the Court felt that the allocation of 33.3% marks for viva voce test for ex-service officers and 22.2% for other candidates was excessive and that the same should not exceed 25% for ex-service officers and 12.2% for other candidates."

thus holding that the view of the Service Commission in allocating 50% marks for academic performance and other 50% marks for the interview cannot be said to be arbitrary.

59. In yet another case however relating to admission to post graduate course in Medical College in Rajasthan wherein in respect of the inservice candidates namely the Doctors who are already working the Government has fixed 33% to the qualifying marks and reservation of inservice candidates increased from 25% to 50% out of remaining 75% after excluding 25% of seats reserved for central quota, the Honble Apex Court has held that such inservice candidates who are practicing Doctors may not have the required extra time to keep themselves afresh on the theoretical side like a open candidate and therefore concluded that the providing of such concession is not arbitrary or illegal. The Supreme Court has held in the said judgment rendered in Pre P.G.Medical Sangharsh Committee and another Vs. State of Rajasthan and others reported in 2001(8) S.C.C.694 as follows:

"The doctors, who are in-service candidates in various medical institutions run and maintained by the Government or government departments, have wide area and horizon of exposure on the practical said and they may not have the required extra time to keep themselves afresh on the theoretical side like an open candidate who may have sufficient time at his disposal to pold through books. The in-service candidates in contrast to the fresh or open candidates have to spend much of their time on attending and treating the patients in the hospitals they serve gaining excellence on the practical side and, in our view, they would constitute a distinct class by themselves to be given a special treatment and no grievance can be made out on the ground that the minimum eligibility marks for their selection in respect of seats earmarked for them should also be the same as that of the fresh or open candidates. We could see no discrimination or arbitrariness involved in the special provision made to meet a just and appropriate need in public interest."

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60. It is also held by the Supreme Court in the judgment rendered in Kiran Guptha and Others Vs. State of Uttra Pradesh and others reported in 2006 S.C.C.719 holding that the entire decision should depend upon the facts and circumstances and the relevant portion of the judgment for the purpose of this case as follows:

"There is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview-test has to be decided on the facts of each case. However, the decisions of the Supreme Court with regard to reasonableness of percentage of marks allotted for interview in cases of admission to educational institutions/schools cannot afford a proper guidance in determining the permissible percentage of marks for interview in cases of selection/appointment to posts in various services. Even in this class, there may be two categories: (i) when the selection is by both a written test and viva voce; and (ii) by viva voce alone. The courts have frowned upon prescribing higher percentage of marks for interview when selection is on the basis of both oral interview and a written test. But, where oral interview alone has been the criteria for selection/appointment/promotion to any posts in senior positions the question of higher percentage of marks for interview does not arise."

61. Therefore, the judicial precedents show that in respect of the candidates like that of the petitioners who have qualified themselves much earlier to be considered for appointment as teachers and to whom the concession of weightage marks given is valid and is considered for the purpose of balancing the candidates like that of the petitioners along with the freshers.

62. In any event I am unable to appreciate the contention of the learned counsel for the petitioners that the conducting of written examination as a sole method of selection is unlawful. On the other hand, the judicial precedents show that it is only in cases where the viva-voce or interview is sole criteria, such method cannot be a proper method of selection. The further contention of the learned counsel for the petitioners that the syllabus for the written examination has been framed as of 2003 - 2004 while the policy is stated to be to meet the requirements of the students as on today and therefore there is contradiction in the policy is not tenable. It is the admitted case of the petitioners that if selected they have to teach the students of the present day and therefore it is too long for them to say that they are not well versed with the subjects prescribed in syllabus as per the Government Orders. On the other hand it is for them to make themselves equal to compete with the present day system and subjects.

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63. Considering the facts and circumstance that, here it is the selection of teachers for the purpose of teaching students as per the syllabus as on today, I am of the considered view that the written examination contemplated under the impugned notification cannot said to be either arbitrary or illegal.

In view of the same these writ petitions are disposed in the following terms:

1. The written test prescribed under the impugned notification for the maximum 150 marks for selection of candidates as Post Graduate Assistants / Physical Education Director Grade I in Government Higher Secondary Schools for 2006 - 2007 is not arbitrary or illegal.

2. It is the duty of the respondents as per the policy to add the weightage marks as given in paragraph 15 of the prospectus to all the candidates who are entitled based on the requirements namely the enrolment in the Employment Exchange and previous experience in the recognized schools and such weightage marks shall be added to all the said candidates immediately after the merit list is evolved and at the time of certificate verification and not after certificate verification and based on such inclusion, the select list shall be made by the respondents for each of the departments.

3. While implementing the communal roster system in the 100 point roster, the respondents shall follow the roster in continuation as maintained from 2000 - 2001 from the required point and the same shall be by serial number as per the 100 point roster and not by taking total number of candidates for each group.

The writ petitions disposed of in the above terms. No Costs. Consequently connected W.P.M.Ps. are closed.

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Asst.Registrar

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Sub Asst.Registrar

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TO

1. THE SECRETARY TO GOVERNMENT
STATE OF TAMILNADU,
EDUCATION DEPARTMENT,
ST.GEORGE FORT, CHENNAI - 600 009.

2. THE DIRECTOR OF SCHOOL EDUCATION
DPI COMPOUND, COLLEGE ROAD,
NUHGAMBAKKAM, CHENNAI - 600 006.

3. THE CHAIRMAN
TEACHER RECRUITMENT BOARD,
4TH FLOOR, E.V.K. SAMPATH MALIGAI,
DPI COMPOUND, COLLEGE ROAD,
CHENNAI - 600 006.

TWO CCS TO MR.V. AYYADURAI, ADVOCATE (SR 42897)

ONE CC TO THE G.P., (SR 42992)

Order in
W.P.Nos.25227, 30741 & 31380 of 2006
and M.P.Nos.1 to 3 in W.P.No.25227
M.P.Nos.1 & 2 in W.P.Nos.30741
and 31380 of 2006

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